PART IX.—FORESTS UNDER CONSERVANCY ARRANGEMENT WHEN THE INDIAN FOREST ACT, 1878, CAME INTO FORCE.

1. The views expressed by the Remembrancer of Legal Affairs in his following Report No. 222, dated 16th February 1881, are concurred in by Government :—

"I am of opinion that the intention of Section 34 of the Forest Act was to enable Government to classify any forest lands or waste lands actually under forest conservancy, at the time the Act was passed, as reserved or protected forests for the purpose of their being thereafter administered under the Act in accordance with the provisions respectively applicable to forests of those classes. The words used in the section are 'forest lands or waste lands then under its, (*i.e.*, Government) executive control for purposes of forest conservancy,' and the marginal note to the section and the heading of the Chapter V further explain that it was meant to apply to 'forests under conservancy administration when the Act came into force.' Neither the word 'forest' nor the word 'conservancy' is defined in the Act. But construing these terms in their ordinary significance, I think that all lands under the immediate control of Government or its officers, which were not cultivated and which were set apart and maintained, whether by the officers of the Forest Department or under the supervision of any other Department, with the express view of protecting the growth of trees or underwood therein, would fall within their meaning. Lands which had remained uncultivated merely because no one had hitherto applied for their occupancy and which had not been in the meantime especially protected for forest purposes, and lands which had been assigned for special purposes other than those of general forest conservancy, such as village grazing-lands and Government *kurans*, were not, I think, intended to be dealt with under the section in question. The fact that trees belonging to Government were to be found in lands of the last named descriptions which it would be criminal in the ryots to cut and remove without permission, would not affect the matter, in as much as the sole test of the applicability of the section to any particular land was the answer to the question whether that land was or was not at the time under forest conservancy.

"But if any given area was suitable for being converted into a reserved or protected forest, as the case might be, and to be subjected as such, to the provisions of the Forest Act, it really mattered very little whether Government declared that area to be a reserved or protected forest under Section 34 or under Section 19 or 28 of the Act. For if the respective rights of Government and private persons in such area had been already enquired into, settled and recorded in some sufficient manner, no harm could happen to any one from the declaration being made under Section 34, instead of under one of the other two sections. And if no such inquiry, &c., had been previously made it is open to Government now, under the second proviso to Section 34, to direct it to be made, if they have not already done so, and such inquiry, &c., will then have to be made in precisely the same manner as if the declaration had been made under Section 19 or 28.

"No doubt, however, any person whose interest may be adversely affected by a notification illegally issued under Section 34 may sue Government to have that notification set aside. For instance, in protected forests an order of Government under Section 29(*b*) for suspending the rights of private persons for a term might be contested, and in reserved forests any order of a Forest Settlement Officer under Sections 11 to 15 might be made the subject of litigation. But I believe that in the areas for which notifications under Section 34 may be said to have been erroneously issued, few, if any, private rights are found to exist. For those in which none exist there

can be no reason for cancelling the notification. And for those in which some do exist it is a question for the consideration of Government whether it would be more expedient to undo what has been done or to stand the risk of future litigation. Should any such litigation succeed, it will still be competent to Government at any time to issue a fresh legal notification for the area concerned under Section 19 or 28, or at the worst the few suits likely to be brought may be compromised.

"Upon the whole, therefore, I would not advise the cancelment of any notification under Section 34 as regards any area which it is intended should remain as a reserved or a protected forest, unless the private rights in such area are numerous and likely to lead to difficulties.

"But it seems that certain of the areas in the Thána District, which have been notified as protected forests under Section 34, are not needed at all for forest purposes and that it is desired to disafforest them. It is necessary, therefore, to consider whether it is not competent to Government absolutely to cancel any notification issued by them under the Act declaring a certain area to be a protected forest.

"I am of opinion that it is competent to Government to do this. It appears from the Act that in protected forests no steps are taken for extinguishing private rights. Subject to the provision of clause (*b*), Section 29, which renders them liable to be merely suspended for a term, such rights continue to exist just as if no notification had issued declaring the area in or over which they are exerciseable a protected forest; so that, in truth, such a notification affects only the property of Government. Now it is obviously optional with Government to continue or discontinue on any portion of their own property the restrictions contemplated in protected forests, and it is, I think, because it was felt to be unnecessary specially to empower Local Governments to cancel notifications declaring certain areas to be protected forests that the Legislature inserted no such provision in the Forest Act. The power is one which naturally appertains to Government independently of legislative enactments. The case of reserved forests is different, (1st) because the Legislature thought it expedient to disallow the right of Local Governments to disafforest such forests without the previous consent of the Government of India, and (2nd) because it was necessary specially to provide that rights which have been extinguished in a reserved forest shall not revive in consequence merely of such forest ceasing to be a reserved forest. These two special provisions sufficiently account for Section 26 of the Forest Act, which would otherwise, I think, have been unnecessary.

"If Government concur in this view, I would recommend that a notification in the following form be issued whenever it is thought fit to direct that any area shall cease to be a protected forest:

"With reference to Notification No. , published at page of the *Bombay Government Gazette* of the of 18 , the Governor in Council is pleased to direct that the undermentioned land shall cease, from the date of this notification, to be a protected forest.

Land above referred to.

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By order, &c."

(G. R. No. 1125, dated 23rd February 1881.)

2. When the Legislature deems it necessary that Government should have power from time to time to alter or cancel any order or decision which it passes under an enactment, special provision is

inserted in this behalf in the enactment. In the absence of any such provision in the Forest Act regarding orders or decisions which Government may pass under the first proviso to Section 34 of that Act, it must be held that the power does not exist.

The effect of the order of Government under the first proviso to Section 34 of the Forest Act is to invest certain persons permanently with the rights admitted to appertain to them in the enquiry which Government hold to have been sufficient; and only an express provision of the law in very clear terms would be recognized by the Courts as authorizing Government at any time afterwards to bring into question or re-investigate such vested rights.

(L. R. No. 1075, dated 24th July 1890; *vide* G. R. No. 5705, dated 14th August 1890.)

3. Though the enquiry into adverse rights, with which areas declared to be reserves under Section 34 may be burdened, can be made in the manner prescribed in Chapter II of Act VII of 1878 and be settled accordingly, areas once notified as reserves cannot again be notified under Section 4 without their previous disafforestation under Section 26. (G. I., R. & A., No. 726-F., dated 23rd June 1891; *vide* G. R. No. 5589, dated 14th August 1891.)